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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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Pacific Information Resources, Inc.,

vs.

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SIMPLE

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COMMUNICATIONS, an Alabama
corporation; WILLIAM TRAVIS

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SULLIVAN, individually, AND DOES 1
through 100, inclusive, WHOSE

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IDENTITIES ARE UNKNOWN,

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Defendants.

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CASE NO. CV-07-4131 MMC	
[Before the Honorable Maxine M. Chesney, Courtroom 7]	
DECLARATION OF TIMOTHY J. KOSTER, PRESIDENT, PACIFIC INFORMATION RESOURCES, INC. IN SUPPORT OF PLAINTIFF PACIFIC'S DEFAULT JUDGMENT UNDER FRCP 55	
[Filed concurrently with Plaintiff's Application for Default Judgment by Court, Memorandum of Points and Authorities in Support Thereof, Declaration of Konrad L. Trope, Declaration of Expert Hayden Bond, Declaration of Expert Ran Hadas, Ph.D. and [Proposed] Order Lodged Concurrently Herewith]]	
Complaint Filing Date:	August 9, 2007
Default Entered:	October 2, 2007
Hearing Date: :	April 4, 2008
Time: :	9:00 a.m.
Dept: :	7

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DECLARATION OF TIMOTHY J. KOSTER IN
SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT
CASE NO. CV-07-4131 MMC

pacific information resources inc\pleadings\sullivan and simple communications\application for default decl of koster final as filed 02 28 08

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DECLARATION OF TIMOTHY J. KOSTER

2   I, TIMOTHY J. KOSTER, do hereby declare as follows:

3   1.   I am a resident of Ventura County. I am over the age of 18. I am the President

4   and CEO of Pacific Information Resources, Inc. ("PIR"). Therefore, I could and would

5   competently testify regarding the following.

6   2.   PIR owns and operates the website located at www.searchsystems.net (the

7   "**WEBSITE**"). PIR has registered two copyrights concerning the **WEBSITE**. One registration,

8   bearing Registration No. TX 6-275-368 protects the text and appearance of the **WEBSITE**,

9   bearing the Uniform Resource Locator ("URL") www.searchsystems.net. In addition, PIR has a

10   copyright registration, bearing Registration No. TX 6-275-367 which protects the Source Code

11   of the **WEBSITE**. True and correct copies of the copyright registrations are attached hereto and

12   incorporated herein as **Exhibit "1"**.

13   3.   PIR also has a registration from the United States Patent and Trademark Office

14   for its service mark consisting of the word mark "search systems" within a design or drawing

15   bearing USPTO Trademark Registration No. 2019094 (the "**SERVICE MARK**"). A true and

16   correct copy of this registration for PIR's registered **SERVICE MARK** is attached hereto and

17   incorporated herein as **Exhibit "2"**.

18   4.   In addition, PIR has continuously, for the preceding five years, at the very least,

19   continuously and openly used variations on its registered **SERVICE MARK**, but such

20   variations, while not registered, have acquired secondary meaning and thus are protected as more

21   fully described herein. PIR's registered **SERVICE MARK** and unregistered service marks are

22   collectively hereinafter referred to as the "**SERVICE MARKS**". The unregistered but protected

23   **SERVICE MARKS** of PIR include, but are not limited to, the terms: "searchsystems,"

24   "searchsystems.net."

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26   5.   PIR (which for ease of reference we shall call "Search Systems") provides

27   members of the public with access to the public records maintained by various international,

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1   federal, state and local governmental and other profit and non-profit entities. The applicable

2   entity typically maintains those records in some kind of a searchable database.

3   6.   Those individual databases aggregate a variety of information about businesses

4   and individuals, including items such as: corporate filings, criminal and civil court filings, vital

5   records, property records, unclaimed property, professional licenses, bankruptcies, judgments,

6   tax liens, and various other matters compiled from public records.

7   7.   Until the **WEBSITE** commenced operations in 1996, it was not possible to search

8   for individual results simultaneously across a multitude of databases. As a result, a member of

9   the public attempting to locate a particular piece of information would have to laboriously search

10 each one of thousands of individual databases. Search Systems developed the technology, which

11 is implemented on the **WEBSITE**, to search all of these constituent databases, simultaneously.

12 Until the **WEBSITE** commenced operations in its original form and location in 1996, it was

13 very difficult to find public record information on the Internet. As a result, a member of the

14 public attempting to locate a particular piece of information would have to laboriously search

15 each one of thousands of web sites to find one that provided online public record information.

16 Search Systems developed the technology, which is implemented on the **WEBSITE**, to provide

17 an easy-to-use directory of public record databases available on the Internet.

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19   8.   Rather than speculating as to the availability of a desired public record, or where

20 to locate it on the Internet, a user simply can log on to Search System's website, and have access

21 to publicly-available information that is indexed and cross-referenced on the **WEBSITE**.

22 Furthermore, the user avoids the cumbersome necessity, with attendant time and cost constraints,

23 of consulting each one of the multiple databases that potentially contain the desired information.

24   9.   In order to accomplish this outcome, Search Systems has developed a proprietary

25 "search" computer program that enables a user to search for particular databases, whereby the

26 user executes a "global" search of all of the thousands of databases indexed and cataloged by

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1   Search Systems, by entering key search terms and parameters. Coupled with the search feature

2   is a "link" feature that enables a user to "click" on the content description for an individual

3   database, the existence of which was disclosed by the search, whereupon the user automatically

4   is re-directed to that database.

5   10.   Search Systems now provides the public with access to over 36,555 linked

6   individual databases, comprising billions of public records. Before linking a new database to the

7   **WEBSITE**, Search Systems evaluates each database for content and usefulness. Search Systems

8   also authors a complete description of the database, so as to facilitate its identification and use.

9   11.   Search Systems has been "on line" since the dawn of the Internet in 1996, and the

10 **WEBSITE** has been extremely successful. In fact, the **WEBSITE** now is the primary "entry"

11 portal for access to free public records on the Internet. Indeed, Search Systems has expended

12 millions of dollars in financial resources and countless hours of time, effort, and energy in

13 developing, operating and promoting the **WEBSITE**.

14   12.   Moreover, similar features of the **WEBSITE**, previously identified above, have

15 required an extraordinary expenditure associated with the research and development of these

16 features as part of maintaining, improving and updating the **WEBSITE**.

17   13.   As a reflection of the reputation and success of the **WEBSITE**, numerous

18 publications have reviewed, praised and identified the **WEBSITE** as a major or the definitive

19 website for access to free public records on the Internet. These publications and articles

20 encompass the period 1998 to present with recent articles in *The New York Times* describing the

21 **WEBSITE** in very positive terms in articles published on November 5 and November 13, 2005.

22 See true and correct copies of *The New York Times* articles concerning Search Systems'

23 **WEBSITE** attached hereto and incorporated herein as **Exhibit "3"**.

24   14.   In addition, other publications have, over the years, repeatedly praised the

25 **WEBSITE**: *Yahoo Internet Life* magazine named the **WEBSITE** in July, 2002 as one of the

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1   Internet's "50 most incredibly useful sites"; *PC World* named the **WEBSITE** in February, 2003

2   as one of "the most useful sites ever"; the *Wall Street Journal* on September 15, 2003 called the

3   **WEBSITE** "one of the best"; and recently as March 16, 2006 *Poynter Online*, a website devoted

4   to journalists and providing resources to them, described the **WEBSITE** as a resource enabling

5   journalists "to enrich stories and dig deeper."

6   15.   In addition, another publication devoted to journalism, *The Columbia Journalism*

7   *Review*, in July, 2003 described the **WEBSITE** as "the best site for finding public records." See

8   true and correct copies of articles concerning Search Systems' **WEBSITE** attached hereto and

9   incorporated herein as **Exhibit "4."**

10   16.   Moreover, the **WEBSITE** has consistently been ranked by various Internet search

11 engines such as Google, Yahoo, MSN and AOL as the "number 1" database for public records,

12 over the past five years. The **WEBSITE** is the first listing to appear after a search for the phrase

13 "public records" when using the above-listed search engines.

14   17.   Search Systems has certainly since 2001, if not earlier, openly posted on its

15 **WEBSITE** a section known as "Terms of Service" ("TOS") which essentially, *inter alia* binds

16 the user of the **WEBSITE** to the Terms of Service otherwise the potential user is not authorized

17 to access the **WEBSITE**. As part of the TOS, the following are defined: acceptable usage of the

18 **WEBSITE**, use of the **WEBSITE** limited to personal use, hyperlinking being prohibited, limits

19 on advertising, appropriate copyright and **SERVICE MARKS** notices, as well as disclaimer of

20 warranties, limitation of liability, and choice of law. A true and correct copy of the TOS is

21 attached hereto and incorporated herein as **Exhibit "5"**.

22   18.   There came a time (within the expiration of any applicable statute of limitations)

23 when Defendant Musselman embarked upon a scheme to copy the "source code" comprising the

24 computer program that runs the **WEBSITE**. That source code presently is written in PHP,

25 which stands for Proprietary Hypertext Processor.

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19.   PHP is a computer system programming language used for developing *dynamic* web content, whereby the **WEBSITE**'s content is updated seamlessly and continuously in real time as new or additional records are attached to the thousands of databases accessed through the **WEBSITE**, such as that found on the **WEBSITE**.

20.   When Search Systems originally developed the **WEBSITE** hosted at EarthLink in 1996 and the subsequent website at www.pac-info.com (released in 1998) the **WEBSITE** was designed in HTML which stands for "Hyper Text Markup Language". Moreover at the time the **WEBSITE** did not have any technical protocols or technological protocols to guard from theft.

21.   Search Systems commenced developing a new **WEBSITE** that was programmed in PHP in 2001. PHP, as a proprietary hypertext processing language, was a very unequivocal attempt by Search Systems to repel the various Defendants' "copying" incursions onto the **WEBSITE**.

22.   Each link destination as written and programmed in PHP for the **WEBSITE**, was entered into Search Systems' database in a manner so that if and when Defendants or others tried to copy Search Systems' **WEBSITE** pages, they would find Link ID's corresponding to the link in Search Systems' database but not the ultimate URL (Uniform Resource Locator).

23.   Search Systems' programming changes from HTML to PHP were incorporated into a new **WEBSITE** and web pages at www.searchsystems.net and released in 2001. The prior programming located at pac-info.com was discontinued and all traffic to www.pac-info.com was forwarded to www.searchsystems.net.

24.   In or about 2005, Search Systems became aware that some party or parties had gone through and copied the content of Search Systems' **WEBSITE** and had gone through the diligent and intentional effort of determining the location of each URL for each coded link in Search Systems' website.

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25.   In other words, these parties deliberately and intentionally circumvented the various technological measures deployed by Search Systems that effectively controlled access to the Database contained within the **WEBSITE**.

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26.   Search Systems in and about April, 2005 then changed the **WEBSITE** again and released a new version of the **WEBSITE** at www.searchsystems.net which is now a "framed" **WEBSITE** so that even if a party determined to circumvent the technological measures deployed by Search Systems that effectively control access to the Database, the URL for a particular link is hidden by the frame.

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27.   In or about August, 2005, Airon Corporation, Alexi Borisov and Levon Gasparion (the "Airon Group") invaded and/or copied the **WEBSITE**, whereby they successfully circumvented the technological measures deployed by Search Systems to protect Search Systems' copyrighted works, including, but not limited to *inter alia* Search Systems' source code and Search Systems' proprietary layout, design and organization of the data and links.

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28.   The Airon Group in or about the summer of 2006 circumvented the codes Search Systems developed to mask the public Universe Resource Locators of all of the links to the thousands of public databases Search Systems had inserted into its **WEBSITE**. Because of the unique syntax and semantics of those links, Search Systems has been able to determine that the Airon Group are in fact using links written by Search Systems, as opposed to any original creation of Defendants, or any of them.

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29.   In June, 2005, Search Systems has also instituted a system in which the Database Link ID is hidden by a programming system called "MD5" which is a "hash" algorithm that creates a random stream of letters and numbers. Thus, anyone that clicks on to Search Systems' website now will see the random MD5 code rather than the numbered Link ID for a particular Database. Nevertheless, the acts of theft and infringement and fraud committed by the Airon Group as described hereinabove still continues to this day.

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30.   Furthermore, the Airon Group copied *inter alia*: (1) Search Systems' selection of pertinent links; (2) Search Systems' scheme of organization for the links; (3) the categories into which the links are organized; (4) and the actual original descriptions that Search Systems authored to describe each link, and (5) the database to which it directed the user. Nevertheless, it has taken Search Systems months to determine a) the identity of the Airon Group; and b) the scope and extent of the Airon Group's illegal copying activities.

31.   Shortly after the Airon Group commenced their illegal pirating of Search Systems' **WEBSITE**, Search Systems was inundated with complaints from persons who had paid for access to one of Defendants' sites, but who thought they were accessing the **WEBSITE** (*i.e.*, Search Systems' **WEBSITE**). **See various and numerous e-mail complaints concerning courtsonline.org** attached hereto as **Exhibit "6."** This in turn lead to considerable discussion of the **WEBSITE** in various on-line forums, which are and have become even more influential in determining the behavior and selections made by Internet users.

32.   Many of the remarks received pertaining to the **WEBSITE** were adverse. Thus, Search Systems was required to devote considerable time, money, energy and expertise to maintain its business relationships with its existing customers, and to fortify the potential economic advantages it anticipated deriving by transacting with future customers.

33.   The sort of "negative feedback" that Search Systems received as a result of Defendants unlawful activity is particularly ominous for a company such as Search Systems, which depends for its economic sufficiency and vitality upon the goodwill and continued patronage of its customers. And, given the persistency of feedback loops such as those that are developing on the Internet, even a few negative recommendations have the potential to wreak devastating consequences.

34.   Over the time of the Airon Group's cyberpiracy, our web traffic has decreased by over 50%.

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1   I declare the foregoing to be true and correct under the penalties of perjury under the laws

2   of the State of California. Dated this 28th day of February, 2008, and executed at Newbury Park,

3   California.

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5   /s/ TIMOTHY J. KOSTER

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PROOF OF SERVICE

I am employed in the County of Orange, State of California in the office of a member of the Bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is: **4631 Teller Avenue, Suite 140 Newport Beach, California 92660.**

On **February 28, 2008**, I served the foregoing document described as:

DECLARATION OF TIMOTHY J. KOSTER, PRESIDENT, PACIFIC INFORMATION RESOURCES, INC. IN SUPPORT OF PLAINTIFF PACIFIC'S DEFAULT JUDGMENT UNDER FRCP 55
on the interested parties in this action by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX **BY MAIL:** I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee at the address on the attached Mailing List.

BY FEDEX: I deposited such envelopes at Irvine, California for collection and delivery by Federal Express with delivery fees paid or provided for in accordance with ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing packages for overnight delivery by Federal Express. They are deposited with a facility regularly maintained by Federal Express for receipt on the same day in the ordinary course of business.

BY FACSIMILE: I transmitted the foregoing document by facsimile to the party(s) identified above by using the facsimile number(s) indicated. Said transmission(s) were verified as complete and without error.

BY INTERNET/E-MAIL: I transmitted the foregoing document by e-mail to the party(s) identified above by using the Internet Protocol Addresses indicated. Said transmission(s) were verified as complete and without error.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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1   Executed on **February 28, 2008**, at Irvine, California.

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3   /s/J. Renée Nordyke

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SERVICE LIST:
Pacific Information Resources v Simple Communications, et. al.
Case No. CV-07-4131 MMC

VIA U.S. MAIL

William Travis Sullivan
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Simple Communications
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